

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

| | | |
|----------------------------------------------|---|----------------------------------|
| DAVID STEBBINS, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 10-3305-CV-S-RED |
| |) | |
| RELIABLE HEAT & AIR, LLC, et al., |) | |
| And |) | |
| |) | |
| RANDAL RICHARDSON, et al. |) | |
| |) | |
| Defendants. |) | |

MOTION TO STRIKE EVIDENCE AS INADMISSIBLE

Comes now Plaintiff David Stebbins, who respectfully submits the following motion to strike evidence as inadmissible.

Defendants claimed that they provided reasonable accommodations in the form of job reassignments. When pressured for details (notably, when and where the job reassignment was offered), defendants admitted that the job reassignment took place during the EEOC mediation.

However, before the mediation began, we signed a confidentiality agreement, stating, unambiguously, that the contents of that mediation “are confidential, unless otherwise discoverable, and cannot be used as evidence in any subsequent administrative or judicial proceeding.”

Wherefore, I respectfully pray that you issue an order containing the following instructions:

1. All evidence pertaining to these job reassignments are hereby stricken from the record.
2. No further evidence documenting this job reassignment offer shall be presented in support of the defense, unless said job reassignment offer can be shown to have occurred outside any confidential meetings.
3. The defense is not to testify about these job reassignments at trial, provided that there *is* a trial

to begin with (to be honest, I think my odds of getting summary judgment are getting better by the moment).

It is so humbly requested, on this 1st day of March, 2011.

A handwritten signature in black ink that reads "David Stebbins". The script is cursive and fluid, with the first letters of the first and last names being capitalized and prominent.

David Stebbins
1407 N Spring Rd, APT #5
Harrison, AR 72601
Phone: 870-204-6024
stebbinsd@yahoo.com

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BRIEF IN SUPPORT OF MOTION

Comes now Plaintiff David Stebbins, who respectfully submits the following brief in support of my motion to strike the defendants' evidence, due to it being inadmissible.

1. Defendant claimed, in his response to my first interrogatory, that he offered me a job reassignment as a reasonable accommodation. See Exhibit A.
2. Defendant expected me to admit that I was offered a job reassignment as a reasonable accommodation. See Exhibit B.
3. When pressured for details (namely, when and where that job reassignment was offered), Defendant admitted that the job reassignment was offered during the EEOC mediation. See Exhibit C.
4. However, defendant and I were required to sign a number of contracts, before that mediation could commence. One of them was a confidentiality agreement. This confidentiality agreement clearly stated that the contents of that mediation could not be used in any administrative or judicial proceeding. See Exhibit D.
5. Notice, Exhibit D does not have any signatures. That is because I pulled it from a saved email. Don Summers is the one who presided over the mediation. In the weeks leading up the

mediation, I requested, over email, copies of the documents that I would have to sign in order to proceed with the mediation, and he kindly obliged. This confidentiality agreement was pulled from that saved email (I get unlimited email storage, so I never delete an email, in case I ever need it). Although Exhibit D lacks any signatures, I assure you, under penalty of perjury, that Exhibit D is otherwise a perfect, word-for-word copy of the confidentiality agreement that *was* signed.

6. If the defense disagrees that he signed a confidentiality agreement, he may say so in his suggestion in opposition to this motion. However, he should do so under caution of being sanctioned for raising a frivolous objection; I am confident that the EEOC will turn over the signed confidentiality agreement if I ask them to.
7. As a direct result, this evidence that the defendants provide in their defense is inadmissible, and should be stricken from the record, accordingly.

Wherefore, I respectfully pray that you strike the defendants' evidence and testimony about the job reassignments that they allegedly offered me as a reasonable accommodation, forbid them to not introduce any more evidence that is inadmissible and/or confidential, instruct the defense to refrain from testifying about this job reassignment at trial (assuming that summary judgment is not reached before a trial can happen), award costs I incurred, and other such relief as the court finds appropriate.

It is so humbly requested, on this 1st day of March, 2011.



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